

105TH CONGRESS
1ST SESSION

H. R. 2351

To amend the Endangered Species Act of 1973 to ensure the recovery of our Nation's declining biological diversity; to reaffirm and strengthen this Nation's commitment to protect wildlife; to safeguard our children's economic and ecological future; and to provide assurances to local governments, communities, and individuals in their planning and economic development efforts.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1997

Mr. MILLER of California (for himself, Mr. VENTO, Mr. OLVER, Mr. FARR of California, Ms. JACKSON-LEE of Texas, Mr. HINCHEY, Mr. BLUMENAUER, Mr. SANDERS, Mr. LEWIS of Georgia, Mr. McDERMOTT, Mrs. MORELLA, Ms. PELOSI, Mrs. MALONEY of New York, Mr. SHAYS, Mr. FRANK of Massachusetts, Mr. WAXMAN, Mr. STARK, Mr. MARKEY, Ms. CHRISTIAN-GREEN, Mr. YATES, Mrs. LOWEY, Mr. DICKS, Mr. DELAHUNT, Mr. LANTOS, Ms. RIVERS, Mr. GEJDENSON, Mr. SERRANO, Mr. SKAGGS, Mr. SHERMAN, Ms. KILPATRICK, Mr. BERMAN, Mr. FALEOMAVAEGA, Ms. FURSE, Mr. THOMPSON, Mr. BONIOR, Ms. DEGETTE, Mr. NEAL of Massachusetts, Mr. BARRETT of Wisconsin, Mr. DELLUMS, Mrs. MEEK of Florida, Mr. WEXLER, Ms. SLAUGHTER, Mr. MORAN of Virginia, Mr. ADAM SMITH of Washington, Mr. CARDIN, Mr. TIERNEY, Mr. McNULTY, Mr. HASTINGS of Florida, Mr. MEEHAN, Mr. McGOVERN, Ms. WATERS, Mr. ENGEL, Ms. CARSON, and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Endangered Species Act of 1973 to ensure the recovery of our Nation's declining biological diversity;

to reaffirm and strengthen this Nation’s commitment to protect wildlife; to safeguard our children’s economic and ecological future; and to provide assurances to local governments, communities, and individuals in their planning and economic development efforts.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMEND-**
 4 **MENT REFERENCES.**

5 (a) SHORT TITLE.—This Act may be cited as the
 6 “Endangered Species Recovery Act of 1997”.

7 (b) TABLE OF CONTENTS.—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents; amendment references.
 Sec. 2. Findings

TITLE I—AMENDMENTS TO ENDANGERED SPECIES ACT OF 1973

Sec. 101. Definitions.
 Sec. 102. Designation of critical habitat and survival habitat.
 Sec. 103. Schedule for listing determinations.
 Sec. 104. Contents of listing petitions.
 Sec. 105. Recovery planning.
 Sec. 106. Cooperative agreements.
 Sec. 107. Interagency cooperation.
 Sec. 108. Permits and conservation plans.
 Sec. 109. Citizen suits.
 Sec. 110. Natural resource damage liability.

TITLE II—TAX INCENTIVES

Sec. 201. Endangered species conservation agreements.
 Sec. 202. Deferral of estate taxes for real property subject to endangered species conservation agreement.
 Sec. 203. Additional deduction for certain State and local real property taxes imposed with respect to property subject to an endangered species conservation agreement.
 Sec. 204. Credit for costs of compliance with endangered species conservation agreement.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

Sec. 301. Authorization of appropriations.

1 (c) AMENDMENT OF ENDANGERED SPECIES ACT OF
2 1973.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of the Endangered Species Act
7 of 1973 (16 U.S.C. 1531 et seq.).

8 **SEC. 2. FINDINGS**

9 The Congress finds and declares the following:

10 (1) The American public recognizes the impor-
11 tance of protecting the natural environmental legacy
12 of this Nation.

13 (2) It is only through the protection of all spe-
14 cies of plants and animals and the ecosystems upon
15 which they depend that we will conserve a world for
16 our children with the spiritual, medicinal, agricul-
17 tural, and economic benefits that plants and animals
18 offer. Moreover, we have a moral responsibility not
19 to drive other species to extinction.

20 (3) We are rapidly proceeding in a manner that
21 will deny a world of abundant, varied species to fu-
22 ture generations.

23 (4) Although the Endangered Species Act of
24 1973 has prevented the extinction of many animal,
25 plant, and fish species, many of these species have

1 not fully recovered and the Act must ensure their
2 long-term survival and recovery.

3 (5) Federal agencies and others should act to
4 protect declining species before they need the full
5 application of the Endangered Species Act of 1973.

6 (6) All members of the public have a right to
7 be involved in the decisions made to protect biodiver-
8 sity.

9 (7) To avoid extinction in the wild, habitats
10 must be conserved by using the best available
11 science.

12 (8) Only by taking actions that implement the
13 existing recovery goal of the Endangered Species Act
14 of 1973 can we ensure that species will eventually be
15 removed from the lists of endangered species and
16 threatened species.

17 (9) We can provide assurances for communities,
18 local governments, and private landowners that will
19 enable them to move forward with planning and eco-
20 nomic development efforts while still protecting spe-
21 cies.

1 **TITLE I—AMENDMENTS TO EN-**
2 **DANGERED SPECIES ACT OF**
3 **1973**

4 **SEC. 101. DEFINITIONS.**

5 Section 3 (16 U.S.C. 1532) is amended—

6 (1) by amending paragraph (5) to read as fol-
7 lows:

8 “(5) The term ‘critical habitat’ for a threatened or
9 endangered species includes—

10 “(A) the specific areas within the geographic
11 area occupied by the species, at the time it is listed
12 in accordance with the provisions of section 4 of this
13 Act, on which are found those physical or biological
14 features (i) essential to the conservation of the spe-
15 cies, and (ii) which may require special management
16 considerations or protections; and

17 “(B) specific areas outside the geographical
18 area occupied by the species at the time it is listed
19 in accordance with the provisions of section 4 of the
20 Act, upon a determination by the Secretary that
21 such areas are essential for the conservation of the
22 species.”;

23 (2) by amending paragraph (16) to read as fol-
24 lows:

1 “(16) The term ‘species’ includes any subspecies of
2 fish or wildlife or plants, any distinct population segment
3 of any species of vertebrate fish or wildlife which inter-
4 breeds when mature, and the last remaining distinct popu-
5 lation segment in the United States of any plant or inver-
6 tebrate species.”; and

7 (3) by adding at the end the following new
8 paragraphs:

9 “(22) The term ‘candidate species’ means any spe-
10 cies—

11 “(A) that is not the subject of a proposed rule
12 under section 4(a)(1);

13 “(B) that the Secretary is considering for list-
14 ing as an endangered species or threatened species;
15 and

16 “(C) for which—

17 “(i) the Secretary has sufficient informa-
18 tion to support a proposed rule for that listing;
19 or

20 “(ii) the Secretary has information indicat-
21 ing that proposing that listing may be appro-
22 priate, but for which further information is re-
23 quired to support such a proposed rule.

24 “(23)(A) The term ‘cumulative impacts’ means those
25 direct impacts and indirect impacts on a species or its

1 habitat that result from the incremental impact of the pro-
2 posed action when added to other past, present, and rea-
3 sonably foreseeable future actions, regardless of what per-
4 son undertakes such other actions.

5 “(B) For purposes of subparagraph (A)—

6 “(i) the term ‘impacts’ includes—

7 “(I) the loss of individual members of the
8 species;

9 “(II) diminishment of the species’ habitat,
10 both qualitatively and quantitatively;

11 “(III) disruption of normal behavioral pat-
12 terns, including but not limited to breeding,
13 feeding, or sheltering; and

14 “(IV) impairment of the species’ ability to
15 withstand random fluctuations in environmental
16 conditions;

17 “(ii) the term ‘direct impacts’ means impacts
18 that are caused by the proposed action and that
19 occur at the same time and place as the proposed
20 action; and

21 “(iii) the term ‘indirect impacts’ means impacts
22 that are caused by the proposed action and that
23 occur later in time than, or farther removed in dis-
24 tance from, the proposed action, but that are still
25 reasonably foreseeable.

1 “(24) The term ‘jeopardize the continued existence
2 of’ means to engage in an action that reasonably would
3 be expected, directly, indirectly or cumulatively, to reduce
4 appreciably the likelihood of recovery in the wild of any
5 foreign or domestic species included in a list published
6 under section 4(c).

7 “(25) The term ‘minimize’—

8 “(A) subject to subparagraph (B), means to
9 avoid to the extent possible, in designing and engag-
10 ing in an activity, adverse impacts to a threatened
11 species or endangered species in the course of the
12 activity; and

13 “(B) for an activity for which it is determined,
14 after consideration of a reasonable range of alter-
15 natives, that avoidance of adverse impacts to the
16 species is impossible, to design and implement the
17 activity in a manner that results in the lowest pos-
18 sible individual and cumulative adverse impacts on
19 the species.

20 “(26) The term ‘mitigate’ means to redress adverse
21 impacts to a threatened species or endangered species in
22 connection with an action, by replacing the number of
23 plants and animals in the wild, and the value to the species
24 of the habitat, that were lost as a result of the adverse
25 impacts.

1 “(27) The term ‘recovery’ means that the threats to
 2 a species, as analyzed under section 4(a), have been elimi-
 3 nated, the species has achieved long-term viability, and the
 4 protective measures under this Act are no longer needed.

5 “(28) The term ‘interim habitat’ includes the habitat
 6 necessary to support either current populations of a spe-
 7 cies or populations which are necessary to ensure survival,
 8 whichever is larger.”.

9 **SEC. 102. DESIGNATION OF CRITICAL HABITAT AND SUR-**
 10 **VIVAL HABITAT.**

11 Section 4 (16 U.S.C. 1531) is amended—

12 (1) in subsection (a), by amending paragraph
 13 (3) to read as follows:

14 “(3) The Secretary, by regulation promulgated in ac-
 15 cordance with subsection (b)—

16 “(A) subject to subparagraph (C), shall, concur-
 17 rently with making a determination under paragraph
 18 (1) that a species is an endangered species or threat-
 19 ened species, designate interim habitat of the spe-
 20 cies;

21 “(B) subject to subparagraph (C), shall concur-
 22 rently with adoption of the final recovery plan for a
 23 species under subsection (f), designate critical habi-
 24 tat of the species;

1 “(C) in the case of a highly migratory marine
2 species, shall designate interim habitat and critical
3 habitat for the species to the maximum extent bio-
4 logically determinable; and

5 “(D) shall, from time to time thereafter as ap-
6 propriate, revise such designations, if the Secretary
7 determines that such revision would expedite or as-
8 sist the recovery of the species.”; and

9 (2) in subsection (b), by amending paragraph
10 (2) to read as follows:

11 “(2)(A) The Secretary shall designate critical habitat,
12 and make revisions thereto, under subsection (a)(3) on the
13 basis of the best scientific data available and after taking
14 into consideration the economic impact, and any other rel-
15 evant impact, of specifying any particular area as critical
16 habitat. Interim habitat designated at the time of listing
17 shall be revised and finalized as critical habitat concur-
18 rently with the adoption of the final recovery plan. The
19 Secretary may exclude any area from critical habitat on
20 the basis that the benefits of such exclusion outweigh the
21 benefits of specifying such area as part of the critical habi-
22 tat, only if the Secretary determines, based on the best
23 scientific and commercial data available, that the failure
24 to designate such area as critical habitat will not impair
25 the species’ recovery.

1 “(B) The Secretary shall designate interim habitat
2 of a species based only on biological factors, giving special
3 consideration to habitat that is currently occupied by the
4 species.”.

5 **SEC. 103. SCHEDULE FOR LISTING DETERMINATIONS.**

6 Section 4(b)(3)(C) (16 U.S.C. 1533(b)(3)(C)) is
7 amended by adding at the end the following:

8 “(iv) The Secretary shall, by not later than 1 year
9 after the date of enactment of the Endangered Species Re-
10 covery Act of 1997, cause to be published in the Federal
11 Register either a proposal to list or a not warranted find-
12 ing under subparagraph (B)(i) for each species for which
13 a finding under subparagraph (B)(iii) was made before
14 that date of enactment.

15 “(v) The Secretary shall, not later than 4 years after
16 the date on which a finding under subparagraph (B)(iii)
17 is published for a species for which a finding under sub-
18 paragraph (B)(iii) was made after the date of enactment
19 of the Endangered Species Recovery Act of 1997, or a
20 date on which such a species is otherwise designated by
21 the Secretary as a candidate species, cause to be published
22 in the Federal Register—

23 “(I) a proposal to list the species under sub-
24 paragraph (B)(ii); or

1 “(II) a not warranted finding under subpara-
2 graph (B)(i).”.

3 **SEC. 104. CONTENTS OF LISTING PETITIONS.**

4 Section 4(b)(3) (16 U.S.C. 1533(b)(3)) is amended
5 by adding at the end the following:

6 “(E) A petition referred to in subparagraph (A) shall,
7 to the maximum extent practicable, contain the following
8 information:

9 “(i) The current known and historic ranges of
10 the species.

11 “(ii) The most recent population estimates and
12 trends, if available.

13 “(iii) The reason that the petitioned action is
14 warranted, including known or perceived threats to
15 the species.

16 “(iv) A bibliography of scientific literature on
17 the species, if any, in support of the petition.

18 “(v) Any other information that the petitioner
19 feels is appropriate.”.

20 **SEC. 105. RECOVERY PLANNING.**

21 Section 4(f) (16 U.S.C. 1533(f)) is amended—

22 (1) in paragraph (1)—

23 (A) in the first sentence—

24 (i) by striking “develop and imple-
25 ment plans” and inserting “within 18

1 months after the date of the adding of a
2 species to a list under subsection (c), de-
3 velop a draft plan, and within 30 months
4 after that date, develop and begin imple-
5 mentation of a final plan”; and

6 (ii) by inserting “each” before “en-
7 dangered”;

8 (iii) by striking “, unless he finds that
9 such plan will not promote the conserva-
10 tion of the species”; and

11 (B) by striking subparagraph (B) and in-
12 serting the following:

13 “(B) include in each plan specific provisions, in-
14 cluding provisions required under subparagraph (C),
15 that provide for the conservation in the recovery
16 plan area of all species listed as endangered species
17 or threatened species, candidate species, and species
18 proposed for listing;

19 “(C) incorporate in each recovery plan for a
20 species—

21 “(i) a description of such site-specific man-
22 agement actions, noting those of the highest
23 priority and greatest recovery potential, as may
24 be necessary to achieve the plan’s goal for the
25 recovery of the species;

1 “(ii) objective, measurable criteria, includ-
2 ing habitat needs and population levels, that,
3 when met, would result in a determination, in
4 accordance with the provisions of this section,
5 that the species be removed from the list;

6 “(iii) estimates of the time required and
7 the cost to carry out those measures needed to
8 achieve the plan’s goal and to achieve inter-
9 mediate steps toward that goal;

10 “(iv) a general description of types of ac-
11 tions likely to violate the taking prohibition of
12 section 9 or the jeopardy prohibition of section
13 7; and

14 “(v) a list of Federal agencies, States,
15 tribes, and local government entities signifi-
16 cantly affected by the goals or management ac-
17 tions set forth in the recovery plan, that should
18 complete a recovery implementation plan pursu-
19 ant to paragraph (5)(A); and

20 “(D) for the purposes of determining the cri-
21 teria under subparagraph (C)(ii), select, in consulta-
22 tion with the National Academy of Sciences, inde-
23 pendent scientists who—

24 “(i) through publication of peer-reviewed
25 scientific literature, have demonstrated relevant

1 scientific expertise in that species or similar
2 species; and

3 “(ii) do not have, nor represent anyone
4 with, a significant economic interest in the re-
5 covery plan.”; and

6 (2) by amending paragraph (5) to read as fol-
7 lows:

8 “(5)(A) Each Federal agency significantly affected by
9 the goals or management actions set forth in a final recov-
10 ery plan shall develop and implement a plan (in this para-
11 graph referred to as a ‘recovery implementation plan’),
12 after providing public notice and an opportunity for public
13 review and comment on the recovery implementation plan.

14 “(B) Each recovery implementation plan shall—

15 “(i) identify the agency’s affirmative conserva-
16 tion duties and management responsibilities which
17 will contribute to the achievement of recovery goals
18 identified in the final recovery plan;

19 “(ii) set forth specific agency actions, time-
20 tables, and funding required to achieve and monitor
21 progress of these recovery goals or management re-
22 sponsibilities; and

23 “(iii) identify any lands or waters under the
24 agency’s jurisdiction or ownership that currently
25 provide or may provide suitable habitat for the spe-

1 cies, identify any actions needed to acquire addi-
 2 tional suitable habitat under section 5(a), and de-
 3 scribe management actions the agency will take on
 4 lands or waters within its jurisdiction or ownership
 5 to contribute toward recovery of the species.

6 “(C) Consistent with section 6, the Secretary shall
 7 cooperate to the maximum extent practicable with States,
 8 tribes, and local government entities that are significantly
 9 affected by a final recovery plan, to develop State coopera-
 10 tive plans to achieve the goals and implement the manage-
 11 ment actions identified in the recovery plan.”.

12 **SEC. 106. COOPERATIVE AGREEMENTS.**

13 Section 6 (16 U.S.C. 1535) is amended by adding
 14 at the end of each of subsections (c) and (d) the following:

15 “(3) In this subsection, the term ‘State’ includes, in
 16 addition to the entities described in section 3(17), any In-
 17 dian tribe.”.

18 **SEC. 107. INTERAGENCY COOPERATION.**

19 (a) **FEDERAL AGENCY ACTIONS AND CONSULTA-**
 20 **TIONS.**—Section 7(a) (16 U.S.C. 1536(a)) is amended—

21 (1) in paragraph (1) in the second sentence—

22 (A) by striking “All other Federal agen-
 23 cies” and inserting “Each other Federal agen-
 24 cy”; and

1 (B) by inserting before the period the fol-
2 lowing: “, including recovery actions identified
3 in recovery implementation plans of the agen-
4 cy”;

5 (2) in paragraph (2) in the first sentence by in-
6 serting after “to be critical,” the following: “in such
7 a way as to diminish the value of that habitat for
8 the recovery of the species,”; and

9 (3) by adding at the end the following:

10 “(5)(A) Any Federal agency may consult with the
11 Secretary regarding any action that may affect any can-
12 didate species or species proposed for listing under section
13 4(c).

14 “(B) If consultation under this paragraph is com-
15 pleted before the listing of the species—

16 “(i) no additional consultation is required solely
17 as a consequence of the subsequent listing of that
18 species, if the Secretary determines that there have
19 been no significant changes in the agency proposal
20 and there is no significant new information that was
21 not considered in the original consultation; and

22 “(ii) the Secretary shall reinitiate consultation
23 under paragraph (2) if the Secretary determines
24 that there has been a significant change in the agen-
25 cy proposal or that there is significant new informa-

1 tion that was not considered in the original consulta-
2 tion.

3 “(C) A Federal agency shall notify the Secretary of
4 any significant change in, or significant new information
5 regarding, any action regarding which the agency con-
6 sulted with the Secretary under this paragraph.

7 “(6) The head of each Federal agency shall monitor
8 the status and trends of endangered species, threatened
9 species, and candidate species that occur on lands or in
10 waters under the administration of the agency.”.

11 (b) OPINION OF SECRETARY.—Section 7(b) (16
12 U.S.C. 1536(b)) is amended—

13 (1) by amending paragraph (3) to read as fol-
14 lows:

15 “(3)(A) Promptly after conclusion of consultation
16 under paragraph (2), (3), or (5) of subsection (a), the Sec-
17 retary shall provide to the Federal agency and the appli-
18 cant, if any, a written statement setting forth the Sec-
19 retary’s opinion, and a summary of the information on
20 which the opinion is based, detailing how the agency action
21 affects the species or its critical habitat, including the
22 amount of habitat and the number of members of the spe-
23 cies that will be taken, and conservation actions to mini-
24 mize and mitigate the impacts of any incidental taking
25 that may result from the action. If jeopardy or adverse

1 modification is found, the Secretary shall suggest those
2 reasonable and prudent alternatives that the Secretary be-
3 lieves would not violate subsection (a)(2), and can be
4 taken by the Federal agency or applicant in implementing
5 the agency action.”;

6 (2) by adding at the end the following:

7 “(5) The Secretary shall, upon receipt of a request
8 to initiate consultation under paragraph (2), (3), or (5)
9 of subsection (a), promptly publish a notice in the Federal
10 Register announcing that the consultation has been initi-
11 ated and briefly describing the proposed agency action.
12 The Secretary shall make available upon request any in-
13 formation in the Secretary’s possession or control concern-
14 ing the consultation or the opinion prepared pursuant to
15 this subsection with respect to the consultation.

16 “(6)(A) The Secretary shall, in preparing an opinion
17 pursuant to this subsection, invite independent scientists
18 with expertise on species that may be affected by the pro-
19 posed agency action to provide input into the consultation
20 or opinion.

21 “(B) For purposes of this paragraph, an independent
22 scientist is an individual described in section 4(f)(1)(D).

23 “(7) Not later than 30 days after the date the Sec-
24 retary provides a written statement under paragraph (3)
25 to the Federal agency and the applicant for a permit, if

1 any, the Secretary shall publish in the Federal Register
2 the Secretary’s findings and reasons for making any deter-
3 mination under this subsection.”; and

4 (3) in paragraph (4)—

5 (A) in subparagraph (B), by striking “will
6 not violate such subsection” and inserting “will
7 not interfere with the timely achievement of re-
8 covery goals” each time it occurs;

9 (B) in clause (ii), by inserting “and miti-
10 gate” after “minimize”;

11 (C) in clause (iii), by striking “and” after
12 the comma at the end;

13 (D) in clause (iv), by striking the period at
14 the end and inserting “, and”; and

15 (E) by adding at the end the following:

16 “(v) directs the Federal agency to assess and
17 report to the Secretary two years after the date of
18 issuance of the written statement and every two
19 years thereafter for as long as any incidental take
20 continues, the amount of incidental take that has oc-
21 curred as a direct impact, indirect impact, or cumu-
22 lative impact.

23 If an assessment under clause (v) indicates that the
24 amount of incidental take authorized under the written
25 statement has been exceeded, the Federal agency shall im-

1 mediately reinitiate consultation with the Secretary pursu-
2 ant to section 7(a)(2).”.

3 (c) BIOLOGICAL ASSESSMENT.—Section 7(c)(1) (16
4 U.S.C. 1536(c)(1)) is amended by striking “Such assess-
5 ment may be undertaken” and inserting “Such assessment
6 shall be made available to the public, and may be under-
7 taken”.

8 (d) FOREIGN SPECIES.—Section 7 (16 U.S.C. 1536)
9 is amended by adding at the end the following:

10 “(q) FOREIGN SPECIES.—This section shall apply to
11 any agency action with respect to any endangered species,
12 threatened species, species proposed to be added to a list
13 under section 4(c), or candidate species carried out in
14 whole or in part, in the United States, in a foreign coun-
15 try, or on the high seas.”.

16 (e) STREAMLINING AND CONSOLIDATING INTER-
17 AGENCY COOPERATION.—Section 7 (16 U.S.C. 1536) is
18 further amended by adding at the end the following:

19 “(r) REGULATIONS TO ENSURE TIMELY CONCLU-
20 SION OF CONSULTATIONS.—

21 “(1) IN GENERAL.—Within 1 year after the
22 date of the enactment of the Endangered Species
23 Recovery Act of 1997, the Secretary shall, in co-
24 operation with the States, promulgate regulations

1 that will ensure timely conclusion of consultations
2 under this section.

3 “(2) CONTENT.—Regulations under this sub-
4 section shall provide, among other matters, that—

5 “(A) consultations and conferences under
6 this section between the Secretary and a Fed-
7 eral agency shall, to the extent practicable and
8 if approved by the Secretary, encompass a num-
9 ber of similar or related agency actions to be
10 undertaken within a particular geographical
11 range or ecosystem; and

12 “(B) the Secretary shall, to the extent
13 practicable, consolidate requests for consulta-
14 tions or conferences from various Federal agen-
15 cies whose proposed actions may affect endan-
16 gered species, threatened species, or candidate
17 species that are dependent on the same eco-
18 system.

19 “(3) ECOSYSTEM DEFINED.—For purposes of
20 this subsection, the term ‘ecosystem’ means a dy-
21 namic complex of organisms and biological commu-
22 nities, and their associated nonliving environment,
23 interacting together as an ecological unit.”.

1 **SEC. 108. PERMITS AND CONSERVATION PLANS.**

2 Section 10(a) (16 U.S.C. 1539(a)) is amended to
3 read as follows:

4 “(a) PERMITS.—

5 “(1) IN GENERAL.—The Secretary may permit
6 under the terms and conditions provided for in this
7 section—

8 “(A) any act otherwise prohibited by sec-
9 tion 9 for scientific purposes or to enhance the
10 propagation or survival of the affected species,
11 or its conservation in the wild, including, but
12 not limited to, acts necessary for the conserva-
13 tion, establishment, and maintenance of experi-
14 mental populations pursuant to subsection (j);
15 or

16 “(B) any taking otherwise prohibited by
17 section 9(a)(1) if such taking is incidental to,
18 and not the purpose of the carrying out of an
19 otherwise lawful activity.

20 The Secretary shall limit the duration of a permit
21 under this paragraph as necessary to ensure that
22 changes in circumstances that could occur in the pe-
23 riod and that would jeopardize the continued exist-
24 ence of the species are reasonably foreseeable.

25 “(2) CONSERVATION PLAN.—(A) No permit
26 may be issued by the Secretary authorizing any tak-

1 ing referred to in paragraph (1)(B) unless the appli-
2 cant therefor submits to the Secretary a conserva-
3 tion plan in accordance with this paragraph that is
4 based on the best scientific and commercial informa-
5 tion available.

6 “(B) A conservation plan under this paragraph
7 shall specify the following:

8 “(i) A description of the specific activities
9 sought to be authorized by the permit.

10 “(ii) A description and analysis of a rea-
11 sonable range of alternative actions to the tak-
12 ing of each species covered by the plan.

13 “(iii) The individual and cumulative im-
14 pacts that may reasonably be anticipated to re-
15 sult from the permitted activities covered by the
16 plan, including the impacts of modification or
17 destruction of habitat of species authorized to
18 be taken under the permit.

19 “(iv) Objective, measurable biological goals
20 to be achieved for each species covered by the
21 plan.

22 “(v) The conservation measures the appli-
23 cant will implement to minimize and mitigate
24 the impacts specified under clause (iii), includ-
25 ing—

1 “(I) the specific conservation meas-
2 ures for achieving the biological goals of
3 the plan; and

4 “(II) any additional requirements or
5 restrictions or other adaptive management
6 provisions that are necessary to respond to
7 all reasonably foreseeable changes in cir-
8 cumstances that would jeopardize the con-
9 tinued existence of any species covered by
10 the plan, including but not limited to new
11 scientific information and changing envi-
12 ronmental conditions, including natural
13 disasters.

14 “(vi) The reasonably anticipated costs of
15 the measures specified under clause (v).

16 “(vii) Measures the applicant will take to
17 monitor the effectiveness of the plan’s conserva-
18 tion measures in achieving the plan’s biological
19 goals and impacts on recovery of each species.

20 “(viii) Funding that will be available to the
21 applicant, throughout the term of the plan, to
22 implement the plan, including but not limited to
23 the conservation measures specified in the plan.

1 “(ix) Such other matters as the Secretary
2 determines to be necessary or appropriate for
3 purposes of the plan.

4 “(C) The Secretary shall not issue a permit
5 under paragraph (1)(B) for the taking of any spe-
6 cies unless the Secretary finds that the conservation
7 plan submitted for the permit meets all of the re-
8 quirements of this paragraph and finds, after oppor-
9 tunity for public comment with respect to a permit
10 application and the related conservation plan, that—

11 “(i) the taking will be incidental;

12 “(ii) the applicant will minimize and miti-
13 gate the individual impacts and cumulative im-
14 pacts of such taking;

15 “(iii) the activities authorized by the per-
16 mit and conservation plan are consistent with
17 the recovery of the species and will result in no
18 net loss of the value to the species of the habi-
19 tat occupied by the species;

20 “(iv) the applicant has, in accordance with
21 paragraph (8), filed a performance bond or
22 other evidence of financial security to ensure
23 adequate funding for each element of the con-
24 servation plan; and

1 “(v) the permit contains such terms and
2 conditions as are necessary or appropriate to
3 carry out the purposes of this paragraph and
4 ensure implementation of the conservation plan
5 by the applicant, including but not limited to,
6 such reporting and monitoring requirements as
7 are necessary for determining whether such
8 terms and conditions are being complied with.

9 “(D)(i) Each permit shall require the permittee
10 to provide to the Secretary, one year after the date
11 of issuance of the permit, and at least every year
12 thereafter during the term of the permit, a complete
13 report on the biological status of the species in the
14 affected area, the impacts of the habitat conserva-
15 tion plan and the permitted action upon the species,
16 and whether the biological goals of the plan are
17 being met.

18 “(ii) The Secretary shall make reports required
19 under this subparagraph available to the public.

20 “(E)(i) If necessary to ensure that the per-
21 mitted action does not jeopardize the continued ex-
22 istence of any species affected by the permitted ac-
23 tion, the Secretary shall require a permittee to im-
24 plement conservation measures in addition to those
25 specified in the plan.

1 “(ii) The Secretary shall pay the costs of any
2 additional conservation measures required under this
3 subparagraph that are in excess of the reasonably
4 anticipated costs specified in the plan.

5 “(3) REVIEW BY SECRETARY.—

6 “(A) The Secretary shall, every three years
7 after the date of approval of a permit applica-
8 tion and conservation plan under this section,
9 review and report on the progress of implemen-
10 tation of the terms and conditions of the permit
11 and plan and make recommendations on actions
12 necessary to ensure that they do not jeopardize
13 the continued existence of any species, that
14 progress is being made toward achieving the bi-
15 ological goals of the plan, and that the require-
16 ments of this section and the goals and policies
17 of the Act are carried out.

18 “(B) The Secretary shall annually—

19 “(i) prepare and make publicly avail-
20 able a report on the status of all permits
21 reviewed pursuant to this paragraph; and

22 “(ii) publish in the Federal Register a
23 notice of the availability of that report.

24 “(4) PERMIT REVOCATION.—The Secretary
25 shall revoke a permit issued under this section and

1 issue an order suspending activities allowed under
2 the permit that may be reasonably expected to cause
3 a take of any species covered by the permit, if—

4 “(A) the permittee is not in compliance
5 with the terms and conditions of the permit, the
6 requirements of this Act, and the regulations
7 implementing this Act, including any failure by
8 a permittee to substantially comply with the
9 conservation plan required for a permit issued
10 under paragraph (1)(B); or

11 “(B) the level of take authorized by the
12 permit has been exceeded.

13 “(5) ACTIONS BY SECRETARY UPON FAILURE
14 BY PERMITTEE.—(A) If a permittee defaults on any
15 obligation of the permittee under a conservation plan
16 or a permit issued under paragraph (1)(B) or a con-
17 servation plan required for that permit, the Sec-
18 retary shall undertake actions to conserve each spe-
19 cies covered by the plan and permit.

20 “(B) For actions required under subparagraph
21 (A) with respect to a default by a permittee, the
22 Secretary may use—

23 “(i) the proceeds of the performance bond
24 or other financial security under paragraph (8)
25 provided by the permittee; and

1 “(ii) amounts in the Habitat Conservation
2 Fund under paragraph (9).

3 “(6) LOW EFFECT, SMALL SCALE PLANS.—(A)
4 The Secretary shall develop and implement a
5 streamlined application and approval procedure for a
6 permit under paragraph (1)(B) and related con-
7 servation plan that the Secretary determines to be a
8 low effect, small scale plan.

9 “(B) A permit and related conservation plan
10 may be treated as a low effect, small scale permit
11 and plan if they meet all of the following criteria:

12 “(i) The permitted action is expected to be
13 of less than 5 years’ duration.

14 “(ii) The conservation plan is applicable to
15 fewer than 5 acres.

16 “(iii) The affected acreage is not adjacent
17 to other lands that have been the subject of a
18 permit issued under this section within the pre-
19 ceding five years to the same person, or as part
20 of the same project.

21 “(iv) The permitted action is not part of a
22 single larger project that will have additional
23 impacts on the endangered species or threat-
24 ened species.

1 “(v) The Secretary determines the plan
2 will have a negligible cumulative impact and in-
3 dividual impact on the recovery of the endan-
4 gered species or threatened species.

5 “(vi) The permitted action is not related to
6 other actions that will have additional impacts
7 on the endangered or threatened species. For
8 purposes of this clause, actions shall be consid-
9 ered related if they—

10 “(I) automatically trigger other ac-
11 tions which may affect endangered species
12 or threatened species;

13 “(II) cannot or will not proceed unless
14 other actions are taken previously or si-
15 multaneously; or

16 “(III) are interdependent on parts of
17 a larger action and depend on the larger
18 action for their justification.

19 “(C)(i) The Secretary shall monitor the imple-
20 mentation and results of low effect, small scale per-
21 mits and conservation plans to ensure that they do
22 not jeopardize the continued existence of any endan-
23 gered species or threatened species.

24 “(ii) If the Secretary determines that additional
25 requirements or restrictions are required to ensure

1 that actions authorized by a low effect, small scale
2 conservation plan do not jeopardize the continued
3 existence of any species determined to be an endan-
4 gered species or threatened species after the plan
5 was approved, the Secretary shall require appro-
6 priate modifications to the plan to establish those re-
7 quirements or restrictions.

8 “(iii) The Secretary shall pay all costs of imple-
9 menting additional requirements or restrictions re-
10 quired under clause (ii).

11 “(D) The permittee for which a low effect,
12 small scale permit and conservation plan is approved
13 under this paragraph shall not be required to pro-
14 vide a performance bond or other financial security
15 under paragraph (8).

16 “(7) MONITORING.—The Secretary shall mon-
17 itor the implementation and results of all conserva-
18 tion plans approved under this subsection to ensure
19 they do not jeopardize the continued existence of any
20 endangered species or threatened species.

21 “(8) PERFORMANCE BONDS.—(A) After the ap-
22 proval of an incidental take permit under paragraph
23 (1)(B) and associated conservation plan in accord-
24 ance with this subsection, but before such permit is
25 issued, the applicant shall—

1 “(i) file with the Secretary a performance
2 bond payable to the United States, and condi-
3 tional upon faithful performance of all the re-
4 quirements of the permit; or

5 “(ii) deposit other forms of financial secu-
6 rity, payable to the United States, in a form
7 and manner approved by the Secretary, and
8 conditional upon such faithful performance,
9 having a cash or market value, as applicable,
10 equal to or greater than the amount of a per-
11 formance bond otherwise required under clause
12 (i).

13 “(B) The amount of the bond or deposit of
14 other financial security required for each permit—

15 “(i) shall be determined by the Secretary;

16 “(ii) shall be based upon the mitigation re-
17 quirements needed to meet the biological goals
18 of the conservation plan; and

19 “(iii) shall be sufficient to ensure the com-
20 pletion of all conservation measures to be imple-
21 mented by the permittee under the conservation
22 plan, as such costs and measures are specified
23 in the plan.

24 “(C) In the case of a bond or deposit of other
25 financial security required for a large-scale conserva-

1 tion plan (as that term is defined in paragraph
2 (11)), or a conservation plan for which the reason-
3 ably foreseeable costs may be prohibitive, the Sec-
4 retary may authorize the use of—

5 “(i) phased bonds or deposits, by which the
6 permittee may divide the area or actions cov-
7 ered by the conservation plan into discrete sec-
8 tions and execute a separate bond or deposit for
9 each section before undertaking any action on
10 that section; or

11 “(ii) adjusted bonds or deposits, through
12 which the amount of the bond or deposits re-
13 quired and the terms of acceptance of the bond
14 or deposit shall be adjusted by the Secretary
15 from time to time as the extent of actions that
16 affect endangered species or threatened species
17 increases or decreases.

18 “(D) The bond or deposits shall be executed by
19 the permittee and a corporate surety or depository,
20 respectively.

21 “(E)(i) The permittee may file a request with
22 the Secretary for the release of all or any part of a
23 performance bond or deposit of any other financial
24 security required under this paragraph. Within 30
25 days after any application for release has been filed

1 with the Secretary, the Secretary shall file notice of
2 such application in the Federal Register and provide
3 opportunity for public comment before making a de-
4 cision under clause (ii).

5 “(ii) Upon receipt of the request, the Secretary
6 shall within 30 days conduct a review of the imple-
7 mentation of the conservation plan to determine
8 whether the requirements of the plan have been fully
9 implemented, the plan has achieved its biological
10 goals, and no further action is needed to ensure that
11 the permitted action is not jeopardizing the existence
12 of the species covered by the plan.

13 “(iii) The Secretary shall notify the permittee
14 in writing of the decision of the Secretary to release
15 or not to release all or part of the bond or deposit,
16 within 90 days after the filing of the request. If the
17 Secretary does not release any portion of the bond
18 or deposit, the Secretary shall notify the permittee
19 in writing, stating the reasons the portion was not
20 released and recommending corrective actions nec-
21 essary to secure that release.

22 “(9) HABITAT CONSERVATION PLAN FUND.—
23 (A) There is established in the Treasury a separate
24 account to be known as the ‘Habitat Conservation

1 Plan Fund’ (in this paragraph referred to as the
2 ‘fund’). The fund shall consist of—

3 “(i) donations to the fund;

4 “(ii) appropriations to the fund;

5 “(iii) amounts received by the United
6 States as fees charged for permits under this
7 section;

8 “(iv) amounts received by the United
9 States as natural resource damages under sec-
10 tion 12; and

11 “(v) the proceeds of performance bonds
12 and other deposits of financial security under
13 paragraph (8).

14 “(B) Amounts in the fund shall be available to
15 the Secretary until expended, without further appro-
16 priation, for—

17 “(i) cost of additional conservation meas-
18 ures required under paragraph (2)(E) and addi-
19 tional requirements and restrictions required
20 under paragraph (6) for recovery of a species;

21 “(ii) actions by the Secretary to conserve
22 species under paragraph (5);

23 “(iii) permitting costs with respect to
24 which fees are deposited in the fund under sub-
25 paragraph (A)(iii) of this paragraph; and

1 “(iv) restoration or replacement of natural
2 resources with respect to which natural resource
3 damages are deposited in the fund under sub-
4 paragraph (A)(iv) of this paragraph.

5 “(10) MULTIPLE LANDOWNER, MULTISPECIES
6 PLANNING.—(A) The Secretary shall encourage the
7 development of multiple landowner, multispecies con-
8 servation plans, that—

9 “(i) make a significant contribution to the
10 recovery of an endangered species or threatened
11 species;

12 “(ii) rely on the best available scientific in-
13 formation;

14 “(iii) rely, to the maximum extent prac-
15 ticable, on ecosystem planning; and

16 “(iv) maintain the well-being of other spe-
17 cies located within the planning area.

18 “(B)(i) To encourage the development of such
19 plans, the Secretary shall cooperate to the maximum
20 extent practicable with States and local governments
21 to streamline permitting processes across jurisdic-
22 tions.

23 “(ii) Such cooperation shall include, but not be
24 limited to, issuing permits under paragraph (1)(B)
25 to a State, local government, or group of local gov-

ernments for large-scale habitat conservation plans that involve more than 1 landowner.

“(C) A permit under subparagraph (B)(ii) may authorize the State, local government, or group of local governments to issue incidental take certificates to landowners that authorize takings under the authority of the permit within the jurisdiction of the State, local government, or group of local governments, if—

“(i) the State, local government, or group of local governments meets the performance bond or other financial security requirements under paragraph (8) with respect to all such certificates, or each certificate is effective only after the landowner to whom the certificate is issued has met those requirements with respect to the certificate;

“(ii) the State, local government, or group of local governments ensures that all incidental take certificates issued under the permit are consistent with the permit and approved habitat conservation plan;

“(iii) the State, local government, or group of local governments provides adequate public

1 notice and opportunity to comment on decisions
2 to issue incidental take certificates; and

3 “(iv) the Secretary and the State, local
4 government, or group of local governments have
5 adequate authority to enforce the terms and
6 conditions of the incidental take certificates.

7 “(D) To encourage the timely development of
8 plans under this paragraph, the Secretary shall—

9 “(i) ensure the participation of a broad
10 range of public and private interests in the de-
11 velopment of the plan;

12 “(ii) provide technical assistance to the
13 maximum extent practicable; and

14 “(iii) give such plans priority consideration
15 for funding under section 6.

16 “(E) The Secretary may approve the use of
17 pooled bonds or deposits in order to meet the re-
18 quirements of paragraph (8) for plans approved
19 under this paragraph which—

20 “(i) do not meet the requirements of sub-
21 paragraph (B); and

22 “(ii) involve more than 1 landowner.

23 “(11) CITIZEN PARTICIPATION; INDEPENDENT
24 SCIENTISTS.—(A) The Secretary may issue a permit
25 under this section only after notice of the receipt of

1 an application for such a permit has been published
2 in the Federal Register, a 60-day public comment
3 period has been provided, and a notice of permit ap-
4 proval has been published in the Federal Register
5 with agency responses to public comments.

6 “(B) The Secretary shall, upon receipt of re-
7 quest for agency involvement in the development of
8 a large-scale conservation plan pursuant to para-
9 graphs (2)(A) and (10), promptly publish a notice in
10 the Federal Register announcing the agency’s in-
11 volvement and briefly describing the activities that
12 would be permitted under the plan. The Secretary
13 shall make available upon request any information in
14 the Secretary’s possession or control concerning such
15 planning efforts.

16 “(C) The Secretary shall invite members of the
17 public to participate in the development of large-
18 scale conservation plans and multiple landowner,
19 multispecies plans. The Secretary shall promulgate
20 regulations establishing a development process under
21 this paragraph which ensures an equitable balance
22 of participation among citizens with a primary inter-
23 est in carrying out economic development activities
24 that may affect species conservation and citizens
25 whose primary interest is in species conservation.

1 Meetings of participants under this subparagraph
2 shall not be subject to the Federal Advisory Commit-
3 tee Act (5 U.S.C. App.), but shall be open to the
4 public.

5 “(D) Upon receipt of a request for agency in-
6 volvement in the development of a large-scale con-
7 servation plan, the Secretary shall invite independent
8 scientists with expertise on species that may be af-
9 fected by the plan to provide input.

10 “(E) For the purposes of this paragraph:

11 “(i) The term ‘agency involvement’ means
12 any role played by the Secretary in the develop-
13 ment of a conservation plan pursuant to para-
14 graph (2)(A).

15 “(ii) The term ‘large-scale conservation
16 plan’ means a conservation plan that would
17 cover a significant portion of the range of a
18 threatened species, endangered species, can-
19 didate species, or species proposed for listing
20 under section 4.

21 “(iii) For purposes of this subparagraph,
22 an independent scientist is a scientist that
23 meets that criteria set forth in clauses (i) and
24 (ii) of section 4(f)(D).

1 “(12) PUBLIC OUTREACH AND COMMUNITY AS-
2 SISTANCE PROGRAM.—(A) The Secretary shall estab-
3 lish a Community Assistance Program to provide
4 timely and accurate information to local govern-
5 ments or property owners.

6 “(B) Under the Community Assistance Pro-
7 gram, the Secretary shall assign to each field office
8 of the United States Fish and Wildlife Service em-
9 ployees whose duties include, but are not limited
10 to—

11 “(i) providing accurate, timely information
12 on local impacts of determinations that species
13 are endangered species or threatened species,
14 recovery planning efforts, and other actions
15 under this Act;

16 “(ii) providing assistance on obtaining per-
17 mits under this section and otherwise complying
18 with this Act;

19 “(iii) serving as a focal point for questions,
20 requests, complaints, and suggestions from
21 property owners and local governments concern-
22 ing the policies and activities of the United
23 States Fish and Wildlife Service or other Fed-
24 eral agencies in the implementation of this Act;
25 and

1 “(iv) training Federal personnel on public
2 outreach efforts under this Act.”.

3 **SEC. 109. CITIZEN SUITS.**

4 Section 11(g) (16 U.S.C. 1540(g)) is amended—

5 (1) in paragraph (1), in subparagraph (A), by
6 striking “in violation” and all that follows through
7 the end of the subparagraph and inserting “in viola-
8 tion of this Act, any regulation or permit issued
9 under this Act, any statement provided by the Sec-
10 retary under section 7(b)(3), or any agreement con-
11 cluded under authority of this Act;”;

12 (2) in paragraph (2)(A)(i), by inserting before
13 the semicolon the following “, except that notwith-
14 standing this clause such an action may be brought
15 immediately after such notification in the case of an
16 action against any person regarding an emergency
17 posing a significant risk to any species of fish or
18 wildlife or plant included in a list under section 4(c)
19 or proposed for inclusion in such a list”; and

20 (3) in paragraph (2)(B)(i), by inserting before
21 the semicolon the following: “, except that notwith-
22 standing this clause such an action may be brought
23 immediately after such notification in the case of an
24 action under this section against any person regard-
25 ing an emergency posing a significant risk to any

1 species of fish or wildlife or plant included in a list
2 under section 4(c)”.

3 **SEC. 110. NATURAL RESOURCE DAMAGE LIABILITY.**

4 Section 11 (16 U.S.C. 1540) is amended by adding
5 at the end the following:

6 “(i) NATURAL RESOURCE DAMAGE LIABILITY.—

7 “(1) IN GENERAL.—Any person who, in viola-
8 tion of this Act, negligently damages any member or
9 habitat of a species included in a list under section
10 4(c)—

11 “(A) shall be liable to the United States
12 for the costs incurred by the United States in
13 restoring or replacing the member or habitat,
14 including reasonable costs of assessing such
15 damage; and

16 “(B) shall be liable to a State for the costs
17 incurred by the State in restoring or replacing
18 the member or habitat under a management
19 agreement with the Secretary under section
20 6(a) or a cooperative agreement with the Sec-
21 retary under section 6(c), including reasonable
22 costs of assessing such damage.

23 “(2) DEPOSIT.—Amounts received by the Unit-
24 ed States under this subsection shall be deposited in
25 the Habitat Conservation Plan Fund established

1 under section 10, and may be obligated only for the
 2 acquisition or rehabilitation of damaged habitat or
 3 populations.

4 “(3) CIVIL ACTIONS BY SECRETARY.—The Sec-
 5 retary may commence a civil action on behalf of the
 6 United States under this subsection.

7 “(4) NOTICE.—No action may be commenced
 8 under this paragraph by the Secretary or a State be-
 9 fore the end of the 60-day period beginning on the
 10 date the Secretary or the State, respectively, pro-
 11 vides written notice of the action to the person
 12 against whom the action is commenced.”.

13 **TITLE II—TAX INCENTIVES**

14 **SEC. 201. ENDANGERED SPECIES CONSERVATION AGREE-** 15 **MENTS.**

16 Section 5 (16 U.S.C. 1534) is amended by adding
 17 at the end the following new subsection:

18 “(c) ENDANGERED SPECIES CONSERVATION AGREE-
 19 MENTS.—

20 “(1) IN GENERAL.—The Secretary may enter
 21 into an agreement in accordance with this sub-
 22 section, to be known as an ‘endangered species con-
 23 servation agreement’, with any person that is an
 24 owner or lessee of real property on which will be car-
 25 ried out conservation measures for any species de-

1 scribed in paragraph (3) in accordance with the
2 agreement.

3 “(2) REQUIRED TERMS.—The Secretary shall
4 include in an agreement with a person under this
5 subsection provisions that—

6 “(A) require the person—

7 “(i) to carry out on real property
8 owned or leased by the person activities
9 not otherwise required by law that contrib-
10 ute to the conservation of a species de-
11 scribed in paragraph (3);

12 “(ii) to refrain from carrying out on
13 real property owned or leased by the per-
14 son otherwise lawful activities that would
15 inhibit the conservation of a species de-
16 scribed in paragraph (3); or

17 “(iii) to do any combination of clauses
18 (i) and (ii);

19 “(B) describe the real property referred to
20 in subparagraph (A) (i) and (ii);

21 “(C) specify species conservation goals for
22 such actions by the person, and measures for
23 attaining such goals;

1 “(D) require the person to make measur-
2 able progress each year in achieving those
3 goals;

4 “(E) specify actions to be taken by the
5 Secretary or the person (or both) to monitor
6 the effectiveness of the agreement in attaining
7 those conservation goals;

8 “(F) require the person to notify the Sec-
9 retary if—

10 “(i) any right or obligation of the per-
11 son under the agreement is assigned to any
12 other person; or

13 “(ii) any term of the agreement is
14 breached by the person or any other person
15 to whom is assigned a right or obligation
16 of the person under the agreement;

17 “(G) specify the date on which the agree-
18 ment takes effect; and

19 “(H) provide that the agreement shall not
20 be in effect on and after any date on which the
21 Secretary publishes a certification under para-
22 graph (4) that the person has not complied the
23 agreement.

1 “(3) COVERED SPECIES.—A species referred to
2 in paragraphs (2)(A) (i) and (ii) is any species that
3 is—

4 “(A) listed as an endangered species or
5 threatened species under section 4;

6 “(B) proposed for such listing under sec-
7 tion 4; or

8 “(C) identified by the Secretary as a can-
9 didate for such listing under section 4.

10 “(4) REVIEW AND APPROVAL OF PROPOSED
11 AGREEMENTS BY SECRETARY.—Upon submission by
12 any person of a proposed agreement under this sub-
13 section, the Secretary—

14 “(A) shall review the proposed agreement
15 and determine whether it complies with the re-
16 quirements of this subsection; and

17 “(B) if the Secretary determines that the
18 agreement complies with the requirements of
19 this subsection, shall—

20 “(i) approve and enter with the per-
21 son into the agreement; and

22 “(ii) promptly notify the Secretary of
23 the Treasury that the agreement has been
24 entered into, specifying the date on which
25 the agreement takes effect.

1 “(5) MONITORING IMPLEMENTATION OF
2 AGREEMENT.—The Secretary shall—

3 “(A) periodically monitor the implementa-
4 tion of each agreement entered into under this
5 subsection; and

6 “(B) based on the information obtained
7 from that monitoring, annually certify to the
8 Secretary of the Treasury whether or not each
9 person that has entered into an agreement
10 under this subsection has complied with the
11 agreement.

12 “(6) STATE COOPERATION.—The Secretary
13 shall establish a technical assistance program in co-
14 operation with the States to assist landowners in the
15 development and implementation of endangered spe-
16 cies conservation agreements.”.

17 **SEC. 202. DEFERRAL OF ESTATE TAXES FOR REAL PROP-**
18 **ERTY SUBJECT TO ENDANGERED SPECIES**
19 **CONSERVATION AGREEMENT.**

20 (a) IN GENERAL.—Part IV of subchapter A of chap-
21 ter 11 of the Internal Revenue Code of 1986 (relating to
22 taxable estate) is amended by adding at the end the follow-
23 ing new section:

1 **“SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDAN-**
2 **GERED SPECIES CONSERVATION AGREE-**
3 **MENT.**

4 “(a) GENERAL RULE.—If—

5 “(1) on the due date (including extensions) for
6 filing the return of tax imposed by section 2001 with
7 respect to the estate of the decedent, an endangered
8 species conservation agreement is in effect with re-
9 spect to any real property included in the decedent’s
10 estate,

11 “(2) the executor of such estate—

12 “(A) elects the application of this section
13 with respect to such real property, and

14 “(B) files such agreement with the Sec-
15 retary, and

16 “(3) each person entering into such agreement
17 consents to the application of subsection (c),

18 then, for purposes of the tax imposed by section 2001,
19 the value of the taxable estate shall be determined by de-
20 ducting from the value of the gross estate an amount
21 equal to the value of such real property.

22 “(b) ENDANGERED SPECIES CONSERVATION AGREE-
23 MENT.—For purposes of this section, the term ‘endan-
24 gered species conservation agreement’ means, with respect
25 to any real property, any endangered species conservation
26 agreement (as defined in section 5(c) of the Endangered

1 Species Act of 1973) which is entered into by each person
 2 who has an interest in such property (whether or not in
 3 possession).

4 “(c) RECAPTURE OF TAX BENEFIT.—

5 “(1) DISPOSITION OF INTEREST; MATERIAL
 6 BREACH OR TERMINATION OF AGREEMENT.—

7 “(A) IN GENERAL.—Except as provided in
 8 subparagraph (C), if—

9 “(i) any person disposes of any inter-
 10 est in any property subject to an endan-
 11 gered species conservation agreement,

12 “(ii) there is a material breach by any
 13 person who holds an interest in such prop-
 14 erty of such agreement, or

15 “(iii) such agreement terminates,
 16 then there is hereby imposed an additional es-
 17 tate tax.

18 “(B) AMOUNT OF TAX.—The amount of
 19 the tax imposed by subparagraph (A) with re-
 20 spect to any interest shall be the amount which
 21 bears the same ratio to the fair market value of
 22 such interest (as of the date of the event caus-
 23 ing such tax to be imposed) as—

24 “(i) the excess of—

1 “(I) what would have been the
 2 estate tax liability but for subsection
 3 (a) over

4 “(II) the estate tax liability,
 5 bears to

6 “(ii) the value of such interest which
 7 would have been included in determining
 8 the gross estate but for subsection (a).

9 For purposes of this subparagraph, the term
 10 ‘estate tax liability’ means the tax imposed by
 11 section 2001 reduced by the credits allowable
 12 against such tax.

13 “(C) EXCEPTION IF TRANSFEREE AS-
 14 SUMES OBLIGATIONS OF TRANSFEROR.—Sub-
 15 paragraph (A)(i) shall not apply to a disposition
 16 if the transferee enters into a binding written
 17 agreement—

18 “(i) to assume the obligations imposed
 19 on the transferor under the endangered
 20 species conservation agreement,

21 “(ii) to assume personal liability for
 22 any tax imposed under subparagraph (A)
 23 with respect to—

24 “(I) any future disposition or
 25 breach by such transferee, and

1 “(II) the termination of the
2 agreement if such transferee holds an
3 interest in such property as of such
4 termination, and

5 “(iii) to provide written notice to the
6 Secretary who entered into the endangered
7 species conservation agreement that the
8 transferee has assumed such obligations
9 and liabilities.

10 “(2) DUE DATE OF ADDITIONAL TAX.—The tax
11 imposed by paragraph (1) shall become due and pay-
12 able on—

13 “(A) in a case described in paragraph
14 (1)(A)(i), the day that is 6 months after the
15 date of the disposition, and

16 “(B) in a case described in clause (ii) or
17 (iii) of paragraph (1)(A), on April 15 of the cal-
18 endar year following the calendar year in which
19 there is a finding under section 5(c)(2) of the
20 Endangered Species Act of 1973 that the event
21 described in such clause has occurred.

22 “(d) STATUTE OF LIMITATIONS.—If a taxpayer in-
23 curs a tax liability pursuant to subsection (c), then—

24 “(1) the statutory period for the assessment of
25 any additional tax imposed by subsection (c) shall

1 not expire before the expiration of 3 years from the
2 date the Secretary is notified (in such manner as the
3 Secretary may by regulation prescribe) of the incur-
4 ring of such tax liability, and

5 “(2) such additional tax may be assessed before
6 the expiration of such 3-year period notwithstanding
7 the provisions of any other law or rule of law that
8 would otherwise prevent such assessment.

9 “(e) ELECTION AND FILING OF AGREEMENT.—The
10 election under this section shall be made on the return
11 of the tax imposed by section 2001. Such election, and
12 the filing under subsection (a) of an endangered species
13 conservation agreement, shall be made in such manner as
14 the Secretary shall by regulation provide.”

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for part IV of subchapter A of chapter 11 of such Code
17 is amended by adding at the end the following new item:

“Sec. 2057. Certain real property subject to endangered species
conservation agreement.”

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to estates of decedents dying after
20 the date of the enactment of this Act.

1 **SEC. 203. ADDITIONAL DEDUCTION FOR CERTAIN STATE**
 2 **AND LOCAL REAL PROPERTY TAXES IM-**
 3 **POSED WITH RESPECT TO PROPERTY SUB-**
 4 **JECT TO AN ENDANGERED SPECIES CON-**
 5 **SERVATION AGREEMENT.**

6 (a) IN GENERAL.—Section 164 of the Internal Reve-
 7 nue Code of 1986 is amended by redesignating subsection
 8 (g) as subsection (h) and by adding the following new sub-
 9 section (g):

10 “(g) ADDITIONAL DEDUCTION FOR CERTAIN STATE
 11 AND LOCAL PROPERTY TAXES IMPOSED WITH RESPECT
 12 TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES
 13 CONSERVATION AGREEMENT.—

14 “(1) GENERAL RULE.—Except as provided in
 15 paragraph (3), there shall be allowed as a deduction
 16 an amount equal to 25 percent of the deduction al-
 17 lowed for the taxable year under this section (with-
 18 out regard to this subsection) for State and local
 19 real property taxes imposed on property to which
 20 this subsection applies. The deduction under this
 21 subsection shall be in addition to any other deduc-
 22 tion allowed by this section.

23 “(2) PROPERTY TO WHICH SUBSECTION AP-
 24 PLIES.—This subsection shall apply to property
 25 which, on the last day of the taxable year—

1 “(A) is subject to an endangered species
 2 conservation agreement under section 5(c) of
 3 the Endangered Species Act of 1973 (16 U.S.C.
 4 1534(c)), and

5 “(B) with respect to which no event de-
 6 scribed in section 2057(c)(1)(A) (other than a
 7 disposition described in section 2057(c)(1)(C))
 8 has occurred.

9 “(3) DEDUCTION NOT ALLOWED.—No deduc-
 10 tion shall be allowed pursuant to this subsection for
 11 taxes imposed upon real property subject to a per-
 12 petual easement that is valued pursuant to section
 13 170(h)(7).”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to taxable years ending after the
 16 date of the enactment of this Act.

17 **SEC. 204. CREDIT FOR COSTS OF COMPLIANCE WITH EN-**
 18 **DANGERED SPECIES CONSERVATION AGREE-**
 19 **MENT.**

20 (a) IN GENERAL.—Subpart B of part IV of sub-
 21 chapter A of chapter 1 of the Internal Revenue Code of
 22 1986 is amended by adding at the end the following new
 23 section:

1 **“SEC. 30A. COSTS OF COMPLIANCE WITH ENDANGERED**
2 **SPECIES CONSERVATION AGREEMENT.**

3 “(a) IN GENERAL.—There shall be allowed as a cred-
4 it against the tax imposed by this chapter for the taxable
5 year an amount equal to the endangered species conserva-
6 tion agreement costs paid or incurred by the taxpayer dur-
7 ing the taxable year.

8 “(b) ENDANGERED SPECIES CONSERVATION AGREE-
9 MENT COSTS.—For purposes of subsection (a), the term
10 ‘endangered species conservation agreement costs’ means
11 expenses which would not have been incurred by the tax-
12 payer but for an endangered species conservation agree-
13 ment (as defined in section 5(c) of the Endangered Species
14 Act of 1973) entered into by the taxpayer.

15 “(c) APPLICATION WITH OTHER CREDITS.—The
16 credit allowed by subsection (a) for any taxable year shall
17 not exceed the excess (if any) of—

18 “(1) the regular tax for the taxable year re-
19 duced by the sum of the credits allowable under sub-
20 part A and sections 27, 28, 29, and 30, over

21 “(2) the tentative minimum tax for the taxable
22 year.”

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for such subpart B is amended by adding at the end the
25 following new item:

“Sec. 30A. Costs of compliance with endangered species conservation agreement.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 15 (16 U.S.C. 1542) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 15. (a) IN GENERAL.—There are authorized to be appropriated—

“(1) to the Secretary of the Interior for carrying out this Act—

“(A) \$130,000,000 for fiscal year 1999;

“(B) \$135,000,000 for fiscal year 2000;

“(C) \$140,000,000 for fiscal year 2001;

and

“(D) \$145,000,000 for fiscal year 2002;

and

“(2) to the Secretary of Commerce for carrying out this Act—

“(A) \$30,000,000 for fiscal year 1999;

“(B) \$35,000,000 for fiscal year 2000;

“(C) \$40,000,000 for fiscal year 2001; and

1 “(D) \$45,000,000 for fiscal year 2002.

2 “(b) CONVENTION IMPLEMENTATION.—In addition
3 to other amounts authorized by this section, there are au-
4 thorized to be appropriated to the Secretary of the Interior
5 for carrying out functions under section 8 related to imple-
6 mentation of the Convention on International Trade in
7 Endangered Species of Wild Fauna and Flora—

8 “(1) \$3,000,000 for each of fiscal years 1999
9 and 2000; and

10 “(2) \$4,000,000 for each of fiscal years 2001
11 and 2002.

12 “(c) HABITAT CONSERVATION PLAN FUND.—In ad-
13 dition to other amounts authorized by this section, there
14 are authorized to be appropriated to the Habitat Con-
15 servation Plan Fund established under section 10
16 \$20,000,000 for each of fiscal years 1999, 2000, 2001,
17 and 2002.

18 “(d) COOPERATIVE AGREEMENT FUNDS.—In addi-
19 tion to other amounts authorized by this section, there are
20 authorized to be appropriated—

21 “(1) to the Secretary of the Interior for enter-
22 ing into cooperative agreements under section 6 with
23 States and Indian Tribes, \$20,000,000 for each of
24 fiscal years 1999, 2000, 2001, and 2002; and

1 “(2) to the Secretary of Commerce for entering
2 into cooperative agreements under section 6 with
3 States and Indian Tribes, \$5,000,000 for each of
4 fiscal years 1999, 2000, 2001, and 2002.”.

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